

## **Section-by Section Summary**

### **of the "Electric System Reliability Act of 1998"**

**Introduced by Rep. Tom Delay (R-TX) and Rep. Edward J. Markey (D-MA)**

**August 6, 1998**

#### **Title I. FERC Authority to Certify Self-Regulating Reliability Organizations.**

This Title adds a new section 215 to the Federal Power Act ("FPA"), which would establish Federal Energy Regulatory Commission ("FERC" or "Commission") authority over an Electric Reliability Organization ("ERO"). The section provides that the ERO shall serve as a self-regulated organization whose membership consists of electric utilities, transmitting utilities, users of the bulk-power system, and other interested persons or public interest groups and whose mission is to promote the reliability of the electricity supply and system. Each system operator would be required to join the ERO. The ERO is authorized to establish standards of utility operation designed to foster reliability, and provide procedures for disciplining, fining or suspending members for violations of its rules. The section empowers FERC to oversee the operations of the organization, review and approve its rules or policy changes prior to their adoption, and amend such rules if it determined such action were necessary to promote the objectives set forth in the section. The section also empowers the FERC to review disciplinary actions undertaken by the ERO, and affirm, set aside, or modify such actions.

#### **Title II. FERC Authority to Require Independent System Operators, to Require Divestiture of Generation Facilities, and to Prohibit Preferential Transmission Service.**

Section 202 authorizes the FERC, upon a finding that the establishment of an Independent System Operator ("ISO") is appropriate to promote competitive markets, that the ISO entity will operate the transmission system on a non-discriminatory basis, and that the transmission owner will receive just compensation, to require a transmitting utility to transfer control of its transmission system to an ISO. The ISO may be either a non-profit or a for-profit entity. Section 202 also provides FERC the authority, upon a finding of market power in retail or wholesale markets, to require an electric utility to divest its generation or transmission facilities, thus becoming a "transco" or a "genco." In the case of an electric utility that owns no generation facilities but is an affiliate of another electric utility that owns transmission facilities (i.e., a holding company system that has created a transco), the Commission may require divestiture of the parent company's stock of the subsidiary electric utility that owns generation or transmission facilities. This divestiture authority may only be exercised if the Commission determines that it will not affect system reliability and that other, less intrusive remedies, such as transferring control of the utility's system to an ISO or denying the utility and its affiliates the authority to sell power at market-based rates, will not constrain the utility's market power.

New section 206(d) of the FPA clarifies the FERC's duty, under section 206(a), to find unlawful and to correct, transmission practices, policies and rates under which vertically-integrated utilities restrict or constrain transmission access for the benefit of their sales service, to the disadvantage of retail and wholesale customers of other sellers. By permitting vertically integrated transmission owning public utilities to provide preferential treatment to service to their own sales service, such as exempting such service from the provisions of the utility's open access tariff, utility sales customers receive materially superior access to the utility's transmission system than do retail or wholesale customers of other sellers, and competitive power supplies are denied access to the market, thus restricting power flows, raising prices and reducing reliability.

A "Single Siting Authority" is defined in this Title as a State agency which has the authority and capability to provide "one-stop shopping" with respect to all permits required for the construction and operation of generation and transmission facilities. Nuclear and hydroelectric generation are excluded from this definition, as the Nuclear Regulatory Commission and the FERC, respectively, have comprehensive authority with respect to their licensing.

Section 203 provides States the option of establishing a Single Siting Authority and of notifying each ISO which has been established to operate transmission facilities within the state of their election. Section 204 provides that if a State does not elect to establish a Single Siting Authority, an ISO that has been established to operate the transmission facilities of a utility in the State may issue certificates of convenience and necessity for the construction and operation of generation and transmission facilities. The ISO is required to conform its certification to be consistent with the position of the Governor of the affected State. Section 205, consistent with the approach taken in the Natural Gas Act, authorizes the holder of a certificate to exercise the right of eminent domain to acquire sites or right-of-ways required for the construction and operation of certified facilities.

### **Title III. Interconnection.**

Section 301 revises and expands the FERC's existing authority to order interconnection, by adding "transmitting utility" to the list of eligible applicants for an interconnection order, and revising the definition of "transmitting utility" to include entities that own or operate transmission or distribution facilities (even if they do not sell electric energy, which is a requirement to be an "electric utility," another category of eligible applicants for an interconnection order). The definition includes transformers, substations, and other facilities used to as part of the power grid.

Section 301 then amends the FERC's interconnection authority to authorize the FERC to order interconnection between the transmission facilities of a utility, as well as other entities, and any of the eligible categories of applicants, upon a showing that such interconnection is safe and is in the public interest. This authority would, for example, enable FERC to require utilities to interconnect with an independently-owned transmission line constructed from Canada into the US, and would allow a third party to install and own equipment that enhances the transfer capability of transmission lines, provided the requisite showings can be made.

### **Title IV. Exempt Transmitting Utilities.**

One obstacle to the development of new transmission facilities that could alleviate constraints on the Nation's transmission systems is the restrictions imposed by the Public Utility Holding Company Act of 1935 ("PUHCA"). Under PUHCA, a company that owns or operates transmission facilities is an "electric utility company," and a company that owns 10 percent or more of the voting securities of, or otherwise is found to control an electric utility company is subject to regulation as a "registered holding company." In addition to being subject to a comprehensive system of Securities and Exchange Commission ("SEC") regulation and oversight of financing and corporate structure as well as various restrictions on non-utility activities, registered holding companies may not acquire the securities of a second utility without obtaining SEC approval, which can only be granted if the second utility is in the same geographic area or region.

Section 35 would eliminate these PUHCA barriers with respect to new transmission facilities, by adopting a PUHCA exemption approach similar to that used for "exempt wholesale generators" under Section 32 of PUHCA. Under Section 35, a company, whether owned by a utility, a holding company, or a non-utility, which only owns or operates "new" transmission facilities (defined as facilities

construction of which is commenced after enactment of this legislation) would be eligible for status as an "exempt transmitting company." Like an exempt wholesale generator, an exempt transmitting utility would be exempt from status as an "electric utility company" under PUHCA, thus exempting its owners from holding company regulation under PUHCA. Under this approach, for example, a California utility would be free to construct a new transmission line in the Mid-West, to alleviate transmission constraints, without being subject to PUHCA restrictions. In addition, like exempt wholesale generators, exempt transmitting companies would be subject to certain SEC rules regarding their financing, affiliate transactions, and other relationships that are designed to protect consumers.